

Introduced by Senator Wolk

February 27, 2015

An act to add Article 3.7 (commencing with Section 20155) to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

SB 762, as introduced, Wolk. Counties: competitive bidding: best value: pilot program.

The Local Agency Public Construction Act requires counties, among others, to comply with specified procedures for contracting for public works projects, including, the use of a competitive bidding process and awarding contracts to the lowest responsible bidder. Existing law provides that specified provisions of the act applicable to public works contracts awarded by counties, as specified, do not apply to certain contracts by the County of Napa and the County of San Diego.

This bill would establish a pilot program to allow counties to select the lowest responsible bidder on the basis of best value, as defined. This bill would require that bidders verify specified information under oath, thereby imposing a state-mandated local program by creating a new crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Article 3.7 (commencing with Section 20155) is added to Chapter 1 of Part 3 of Division 2 of the Public Contract Code, to read:

Article 3.7. Best Value Construction Contracting for Counties
Pilot Program

20155. (a) This article provides for a pilot program for counties when awarding construction contracts.

(b) The board of supervisors of any county shall let any contract for a project pursuant to this article to the lowest responsible bidder or else reject all bids.

(c) The lowest responsible bidder may be selected on the basis of the best value to a county. In order to implement this method of selection, the board of supervisors shall adopt and publish procedures and required criteria that ensure that all selections are conducted in a fair and impartial manner. These procedures shall conform to Sections 20155.2 and 20155.3 and shall be mandatory for counties who choose to participate in the pilot program.

(d) If the board of supervisors deems it to be in the best interest of the county, the board of supervisors may, on the refusal or failure of the successful bidder for a project to execute a tendered contract, award it to the second lowest responsible bidder. If the second lowest responsible bidder fails or refuses to execute the contract, the board of supervisors may likewise award it to the third lowest responsible bidder.

20155.1. As used in this article:

(a) "Best value" means a procurement process whereby the lowest responsible bidder may be selected on the basis of objective criteria with the resulting selection representing the best combination of price and qualifications.

(b) "Best value contract" means a contract entered into pursuant to this article.

(c) "Best value contractor" means a properly licensed person, firm, or corporation that submits a bid for, or is awarded, a best value contract.

(d) "Demonstrated management competency" means the experience, competency, capability, and capacity of the proposed

1 management staffing to complete projects of similar size, scope,
2 or complexity.

3 (e) “Financial condition” means the financial resources needed
4 to perform the contract. The criteria used to evaluate a bidder’s
5 financial condition shall include, at a minimum, capacity to obtain
6 all required payment bonds, performance bonds, and liability
7 insurance.

8 (f) “Labor compliance” means the ability to comply with, and
9 past performance with, contract and statutory requirements for the
10 payment of wages and qualifications of the workforce. The criteria
11 used to evaluate a bidder’s labor compliance shall include, as a
12 minimum, the bidder’s ability to comply with the apprenticeship
13 requirements of the California Apprenticeship Council and the
14 Department of Industrial Relations, its past conformance with
15 those requirements, and its past conformance with requirements
16 to pay prevailing wages on public works projects.

17 (g) “Qualifications” means the financial condition, relevant
18 experience, demonstrated management competency, labor
19 compliance, the safety record of the bidder, and, if required by the
20 bidding documents, some or all of the preceding qualifications as
21 they pertain to subcontractors proposed to be used by the bidder
22 for designated portions of the work.

23 (h) “Relevant experience” means the experience, competency,
24 capability, and capacity to complete projects of similar size, scope,
25 or complexity.

26 (i) “Safety record” means the prior history concerning the safe
27 performance of construction contracts. The criteria used to evaluate
28 a bidder’s safety record shall include, at a minimum, its experience
29 modification rate for the most recent three-year period, and its
30 average total recordable injury or illness rate and average lost work
31 rate for the most recent three-year period.

32 20155.2. A county shall proceed in accordance with the
33 following when awarding best value contracts under this article:

34 (a) A county shall prepare a solicitation for bids and give notice
35 pursuant to Section 20125.

36 (b) A county shall establish a procedure to prequalify bidders.
37 The information required pursuant to this section shall be verified
38 under oath by the bidder in the manner in which civil pleadings in
39 civil actions are verified. Information submitted by the bidder as
40 part of the evaluation process shall not be open to public inspection

1 to the extent that information is exempt from disclosure under the
2 California Public Records Act (Chapter 3.5 (commencing with
3 Section 6250) of Division 7 of Title 1 of the Government Code).

4 (c) Each solicitation for bids shall do all of the following:

5 (1) Invite prequalified bidders to submit sealed bids in the
6 manner prescribed by this article.

7 (2) Include a section identifying and describing the following:

8 (A) Criteria that a county will consider in evaluating bids.

9 (B) The methodology and rating or weighting system that will
10 be used by a county in evaluating bids.

11 (C) The relative importance or weight assigned to the criteria
12 identified in the request for bids.

13 (d) Final evaluation of the best value contractor shall be done
14 in a manner that prevents cost or price information from being
15 revealed to the committee evaluating the qualifications of the
16 bidders prior to completion and announcement of that committee's
17 decision.

18 20155.3. Selection of the best value contractor shall be made
19 as follows:

20 (a) A county shall evaluate the qualifications of the bidders
21 based solely upon the criteria set forth in the solicitation
22 documents, and shall assign a qualifications score to each bid.

23 (b) The award of the contract shall be made to the bidder whose
24 bid is determined by a county, in writing, to be the best value to a
25 county. To determine the best value contractor, the county shall
26 divide each bidder's price by its qualifications score. The lowest
27 resulting cost per quality point will represent the best value bid.

28 (c) A county shall issue a written decision of its contract award.

29 (d) Upon issuance of a contract award, a county shall publicly
30 announce its award identifying the best value contractor to which
31 the award is made, the project, the project price, and the selected
32 best value contractor's score based on the evaluation criteria listed
33 in the request for bids. The notice of award shall be made public
34 and include the score of the selected best value contractor in
35 relation to all other responsive bidders and their respective prices.
36 The contract file shall include documentation sufficient to support
37 the decision to award.

38 20155.4. (a) On or before January 1, 2020, the board of
39 supervisors of a participating county shall submit a report to the
40 appropriate policy committees of the Legislature and the Joint

1 Legislative Budget Committee. The report shall include, but is not
2 limited to, the following information:

3 (1) A description of the projects awarded using the best value
4 procedures.

5 (2) The contract award amounts.

6 (3) The best value contractors awarded the projects.

7 (4) A description of any written protests concerning any aspect
8 of the solicitation, bid, or award of the best value contracts,
9 including the resolution of the protests.

10 (5) A description of the prequalification process.

11 (6) The criteria used to evaluate the bids, including the weighting
12 of the criteria and an assessment of the effectiveness of the
13 methodology.

14 (7) If a project awarded under this article has been completed,
15 an assessment of the project performance, to include a summary
16 of any delays or cost increases.

17 (b) A report submitted pursuant to subdivision (a) shall be
18 submitted in compliance with Section 9795 of the Government
19 Code.

20 (c) This section shall remain in effect only until January 1, 2020,
21 and as of that date is repealed, unless a later enacted statute, that
22 is enacted before January 1, 2020, deletes or extends that date.

23 20155.5. Except as otherwise provided in this article, this article
24 is not intended to change in any manner any guideline, criteria,
25 procedure, or requirement of a county to let any contract for a
26 project to the lowest responsible bidder or else reject all bids.

27 SEC. 2. No reimbursement is required by this act pursuant to
28 Section 6 of Article XIII B of the California Constitution because
29 the only costs that may be incurred by a local agency or school
30 district will be incurred because this act creates a new crime or
31 infraction, eliminates a crime or infraction, or changes the penalty
32 for a crime or infraction, within the meaning of Section 17556 of
33 the Government Code, or changes the definition of a crime within
34 the meaning of Section 6 of Article XIII B of the California
35 Constitution.